

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

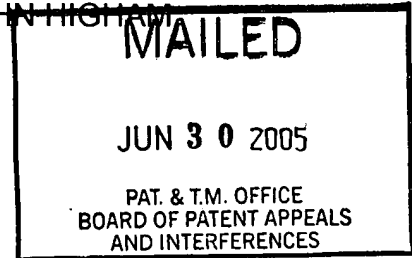
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Ex Parte PETER GODLEWSKI and JOHN HIGHAM

Appeal No. 2005-0949
Application No. 09/624,154

ON BRIEF



Before KRASS, BLANKENSHIP and MACDONALD, *Administrative Patent Judges*.

MACDONALD, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal from the final rejection of claims 1-15 and 31-35. Claims 16-30 and 36-55 have been cancelled.

Invention

Appellants' invention relates to a method for supplying items to a plurality of dispensing units (Application, p. 2, 11. 20 - 21). The dispensing units may each hold a plurality of multiple distinct items, such as manufacturer, repair, and operations supplies, medical and pharmaceutical supplies, and the like (*id.*, p.9, 11. 25 - 26; p.7, 11. 28 - 29). An example of a suitable dispensing unit is one that has

an enclosure with adjustable shelves, each of which has multiple storage locations (*id.*, p.8, 11. 9 - 13). Touch-sensitive buttons on the shelves near each storage location may be connected to a processor that receives signals from the buttons when actuated (*id.*, p.8, 11. 13 - 16), allowing removal or replacement of items in the unit to be monitored (*id.*, p. 8, 11. 16 - 26). The dispensing units have electronics that permits access to a server computer over a network (*id.*, p. 10, 11. 7 - 8), with the server computer having computer code to periodically poll the dispensing units to download stock-level and transaction information (*id.*, p. 10, 11. 8 - 10). This restocking information is used by the server computer to aggregate the number and types of items to be restocked into the dispensing units (*id.*, p. 10, 11. 13 - 14). The aggregated restocking information is used to generate ordering information, identifying items to be reordered, their quantities, and suppliers, and the reordering information is transmitted over the network to an application computer (*id.*, p. 10, 11. 14 - 17). The application computer operates a hosted procurement application to procure restock quantities, and may include features that allow such operations as approving, modifying, or rejecting orders, changing suppliers, and the like (*id.*, p. 10, 11. 24 - 32). Appellants' Supplemental Brief, page 2, last 2 lines through page 3, line 17.

Claim 1 is representative of the claimed invention and is reproduced as follows:

1. A method for supplying items to a plurality of dispensing units, the method comprising:

providing a plurality of dispensing units that each hold a plurality of each of multiple distinct items, wherein the units have a processor and a memory for storing a record of inventory levels of each distinct item;

periodically sending restocking information from the dispensing units over a network to a server computer, wherein the restocking information includes a restock quantity for each distinct item;

aggregating the restock quantities over the plurality of dispensing units for each of the multiple distinct items;

generating ordering information for the items to be restocked based on the aggregated restocking information; and

electronically sending the ordering information to one or more supplier computers to order items to be restocked into the dispensing units.

References

The references relied on by the Examiner are as follows:

Kawashima et al. (Kawashima)	5,168,445	Dec. 1, 1992
Sone	6,204,763	Mar. 20, 2001 (Filed Mar. 22, 1999)
Salvo et al. (Salvo)	6,341,271	Jan. 22, 2002 (Filed Nov. 13, 1998)

Rejections At Issue

Claims 1, 3, and 31-34 stand rejected under 35 U.S.C. § 102 as being anticipated by Sone.

Claims 1, 3, and 31-34 stand rejected under 35 U.S.C. § 103 as being obvious over the combination of Sone and Kawashima.

Claims 2, 4-15, and 35 stand rejected under 35 U.S.C. § 103 as being obvious over the combination of Sone and Salvo.

Claims 2, 4-15, and 35 stand rejected under 35 U.S.C. § 103 as being obvious over the combination of Sone and Kawashima and Salvo.

Throughout our opinion, we make references to the Appellants' briefs, and to the Examiner's Answer for the respective details thereof.¹

OPINION

With full consideration being given to the subject matter on appeal, the Examiner's rejections and the arguments of the Appellants and the Examiner, for the reasons stated *infra*, we reverse the Examiner's rejection of claims 1, 3, and 31-34 under 35 U.S.C. § 102; and we reverse the Examiner's rejection of claims 1-15 and 31-35 under 35 U.S.C. § 103.

Only those arguments actually made by Appellants have been considered in this decision. Arguments that Appellants could have made but chose not to make in the brief have not been considered. We deem such arguments to be waived by Appellants [see 37 CFR § 41.37(c)(1)(vii) effective September 13, 2004 replacing 37 CFR § 1.192(a)].

I. Whether the Rejection of Claims 1, 3, and 31-34 Under 35 U.S.C. § 102 is proper?

It is our view, after consideration of the record before us, that the disclosure of Sone does not fully meet the invention as recited in claims 1, 3, and 31-34.

¹ Appellants filed a supplemental appeal brief on April 15, 2004 fully replacing the appeal brief filed on October 17, 2003. Appellants filed a reply brief on September 30, 2004. The Examiner mailed an Examiner's Answer on August 13, 2004.

Accordingly, we reverse. For our decision on this rejection we treat claim 1 as a representative claim.

It is axiomatic that anticipation of a claim under § 102 can be found only if the prior art reference discloses every element of the claim. ***See In re King***, 801 F.2d 1324, 1326, 231 USPQ 136, 138 (Fed. Cir. 1986) and ***Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick Co.***, 730 F.2d 1452, 1458, 221 USPQ 481, 485 (Fed. Cir. 1984).

With respect to independent claim 1, Appellants argue at pages 7-8 of the supplemental brief ("the brief" hereinafter), "Sone fails to disclose aggregating restock quantities over a plurality of dispensing units" and aggregating is not inherent to Sone. We fully agree for the reasons set forth by Appellants. Contrary to the Examiner's position in the unnecessarily overblown Examiner's Answer, we do not find "the store must inherently aggregate *all* sales." (Answer, page 51, paragraph 105). A store may merely order a fixed quantity every time the on-hand stock falls below a trigger level, regardless of what happened to stocks (sales, theft, damage, etc.) above the trigger level.

Therefore, we will not sustain the Examiner's rejection under 35 U.S.C. § 102.

II. Whether the Rejections of Claims 1-15 and 31-35 Under 35 U.S.C. § 103 are proper?

It is our view, after consideration of the record before us, that the evidence relied upon and the level of skill in the particular art would not have suggested to one of ordinary skill in the art the invention as set forth in claims 1-15 and 31-35. Accordingly, we reverse. For our decision on this rejection, we treat claim 1 as a representative claim.

In rejecting claims under 35 U.S.C. § 103, the Examiner bears the initial burden of establishing a *prima facie* case of obviousness. *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). *See also In re Piasecki*, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984). The Examiner can satisfy this burden by showing that some objective teaching in the prior art or knowledge generally available to one of ordinary skill in the art suggests the claimed subject matter. *In re Fine*, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). Only if this initial burden is met does the burden of coming forward with evidence or argument shift to the Appellants. *Oetiker*, 977 F.2d at 1445, 24 USPQ2d at 1444. *See also Piasecki*, 745 F.2d at 1472, 223 USPQ at 788.

An obviousness analysis commences with a review and consideration of all the pertinent evidence and arguments. "In reviewing the [E]xaminer's decision on appeal, the Board must necessarily weigh all of the evidence and argument."

Oetiker, 977 F.2d at 1445, 24 USPQ2d at 1444. "[T]he Board must not only

assure that the requisite findings are made, based on evidence of record, but must also explain the reasoning by which the findings are deemed to support the agency's conclusion." *In re Lee*, 277 F.3d 1338, 1344, 61 USPQ2d 1430, 1434 (Fed. Cir. 2002).

With respect to independent claim 1, Appellants argue at page 9 of the brief that Kawashima fails to teach aggregating over a plurality of dispensing units. The Examiner responds (answer at page 56) that he "has never relied entirely on Kawashima for showing aggregating [restock] quantities over a [plurality] of dispensing units." Rather, the Examiner points out that Kawashima is relied on for showing "aggregating restock quantities for each of the items to be restocked." The Examiner then dismisses Appellants argument without further explanation as to how or why Kawashima teaches aggregating in the form pointed out by the Examiner.

We have reviewed the Kawashima reference and find no mention of aggregating. We do not choose to guess at the Examiner's rationale for this rejection. Without more, the Examiner has failed to meet the initial burden of establishing a ***prima facie*** case of obviousness with respect to claim 1.

We have reviewed the Salvo reference and find that with respect to claims 2, 4-15, and 35, it fails to cure the deficiencies of Sone and/or Kawashima.

Therefore, we will not sustain the Examiner's rejections under 35 U.S.C. § 103.

Conclusion

In view of the foregoing discussion, we have not sustained the rejection under 35 U.S.C. § 102 of claims 1, 3, and 31-34; and we have not sustained the rejection under 35 U.S.C. § 103 of claims 1-15 and 31-35.



ERROL A. KRASS)
Administrative Patent Judge)



HOWARD B. BLANKENSHIP)
Administrative Patent Judge)



ALLEN R. MACDONALD)
Administrative Patent Judge)

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